IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2139 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RAVUBHA TAPUBHA VAGHELA - Appellant(s)
Versus
DRIVER OF TRUCK NO. GJ-12-T--9291 (NOT KNOWN.) & 2 - Defendant(s)

==========

Appearance :
MR MEHUL S SHAH for Appellant(s) : 1,MR SURESH M SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.
MR MEHUL S SHAH for Defendant(s) : 1 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

The appellant was original claimant in MACP No. 319/1996 filed before Motor Accident Claims Tribunal, Fast Track Court No.2, Kachchh at Bhuj.

2. On 16th September, 1995, the appellant while returning from Bhuj and going towards Madhapar on his Luna, received serious injuries when his Luna was hit by a truck. The appellant therefore, filed the above-mentioned claim petition seeking compensation of Rs. 15,00,000/- from the driver, owner and insurer of the truck involved in the accident.

3. The Tribunal came to the conclusion that the accident occurred due to sole negligence of the truck driver.

4. With respect to the quantum of compensation, the appellant claimant produced medical evidence to suggest that he had received serious injuries resulting into permanent disability to the extent of 90% of the body as a whole. Before the Tribunal it was contended by the claimant that he was running a shop of Cold Drinks and was thereby earning approximately Rs.3,000/- to Rs.4,000/- per month. The claimant contended that though the medical evidence suggested

disability of 90% so far as functional disability is concerned, same is total. The Tribunal accepted his current income at Rs.3,000/- per month, granted benefit of increase in future and considered his prospective income at Rs. 4,500/- per month i.e. Rs.54,000/- per annum. For the claimant aged 40 years, Tribunal adopted multiplier of 15 and granted Rs. 8,10,000/- for loss of future income. The Tribunal granted Rs. 1,00,000/- for medical expenses, Rs.9,000/- for loss of future income, Rs.10,000/- for attendant charges, Rs.40,000/- for pain, shock and suffering, Rs.50,000/- for future medical treatment.

5. Before us, learned advocate Shri Mehul Shah for the claimant submitted that the Tribunal has made an award which is inadequate. He submitted that the compensation is required to be enhanced. It is the case put up before us that the claimant was earning about Rs. 4,000/- per month and his future loss of income should have been calculated accordingly. Grievance is also made regarding compensation awarded for future treatment as well as for pain, shock and suffering.

6. Having heard the learned advocate for the appellant, we find that the Tribunal has passed an award which is just and reasonable. Firstly, before the Tribunal, claimant himself had

averred that he is earning Rs. 3,000/- to Rs. 4,000/- per month. In that view of the matter, Tribunal committed no error in assessing his future income at Rs.4,500/- per month after granting benefit of increase in future and adopting multiplier of 15 for man aged 40 years, if at all somewhat on the higher side. With respect to the charge of medical treatment, claimant had produced bills to the extent of 90,000/- against which the Tribunal granted a total sum of Rs.1,00,000/-. The Tribunal also awarded a sum of Rs. 50,000/- for future medical expenses.

7. In short, the compensation awarded by the Tribunal under different heads is just and proper. Significantly, though the medical evidence suggested otherwise, the Tribunal accepted the say of the applicant that on account of the injuries, he is completely unable to earn his living. In other words, the averment of the claimant that he has suffered 100% functional disability was accepted by the Tribunal.

8. Additionally, we also note that the Tribunal awarded interest at the rate of 15% per annum from the date of filing the claim petition till 30th June, 1997, at the rate of 12% per annum from 1st July, 1997 to 31st December, 2000 and at the rate of 9% per annum from 1st January, 2001

till actual payment. We therefore, find that the directions for payment of compensation of Rs. 10,19,000/- with interest as specified here-in-above, in facts of this case, cannot be categorised as inadequate.

9. The appeal therefore, fails and is hereby dismissed.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)